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No. 873 66

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1945~~ 1946.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, ET AL.,

Petitioners,

vs.

JOHN AGNEW, F. O. FAYERWEATHER

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondents oppose the petition for a writ of certiorari and submit that there would appear to be no sound basis for its allowance in this case.

No conflict with decisions of other courts is shown to arise or exist with respect to the decision below. No failure to give proper effect to the applicable decisions of this court is demonstrated; and surely it cannot seriously be contended that the case presents a question of such grave importance as to justify the review by this court.

It is as true today as it was when the court decided *Magnum Import* v. *Coty* (1923) (262 U. S. 159, 67 L. Ed. 922) that:

> "The jurisdiction to bring up cases by certiorari from the circuit court of appeals was given for two purposes: First, to secure uniformity of decision be-

> tween those courts in the nine circuits; and, second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort.' *The jurisdiction was not conferred upon this court merely to give the defeated party in the circuit court of appeals another hearing.*" (Italics supplied.)

The careful and well considered opinion of the court below (R. 29) sufficiently refutes all argument advanced by petitioners.

It should be emphasized, however, that this case does not present a question of judicial review of a finding or discretionary order of an administrative agency—but simply whether, as a matter of law, the agency has properly interpreted its own grant of power.

As the United States Court of Appeals for the District of Columbia clearly stated (R. 33-34):

> "The ultimate question before us is whether the interpretation of the statute by the Board, as the definition of a standard to be applied generally, is correct. That question is not one of fact. It is not even what one learned author calls 'a particularized conclusion', i.e., the exercise of judgment with respect to particular facts in determining the application of the statute. The question is a matter of law. We need not, therefore, attempt to thread our way through the confused and conflicting phases of the subject of judicial review which have puzzled both courts and students. On matters of law, unmixed, reviewing courts are free to substitute their own judgment for that of the administrator, although great weight must be given the administrative judgment. Consideration of a few recent decisions of the Supreme Court are sufficient to establish this conclusion. *Dobson* v. *Commissioner*, 320 U. S. 489, 64 S. Ct. 239, 88 L. Ed. 248 (1943); *Security Mills Co.* v. *Comm'r*, 321 U. S. 281, 64 S. Ct. 596, 88 L. Ed. 725 (1944); *Medo Corp.* v. *Labor Board*, 321 U. S. 678, 681-682, n. 1, 64 S. Ct. 830, 88 L. Ed. 1007 (1944).

For an earlier statement see *Great Northern Railway Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 295, *et seq.*, 42 S. Ct. 477, 66 L. Ed. 943 (1922).

We conclude as to the scope of the power of the court that the construction of the statute, for violation of which the Board is authorized to remove from office directors of a bank, is essentially a judicial function, but that the construction given the statute by the Board is entitled to great weight and respect."

As this Court said in *Stark* v. *Wickard* (1944), 321 U. S. 288, 309-10, 88 L. Ed. 733, 748,

> "When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted. This permits the courts to participate in law enforcement entrusted to administrative bodies only to the extent necessary to protect justiciable individual rights against administrative action fairly beyond the granted powers. The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts by Congress by the statutes establishing courts and marking their jurisdiction."

For reasons herein stated and those stated in the opinion of the Court below it is respectfully submitted that the petition for writ of certiorari should be denied.

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